

BEFORE THE  
FAIR POLITICAL PRACTICES COMMISSION  
STATE OF CALIFORNIA

In the Matter of:

CALIFORNIA INDEPENDENT BUSINESS  
POLITICAL ACTION COMMITTEE and  
CHARLES H. BELL, JR.,

Respondents

FPPC No. 99/195

OAH No. N2003040568

**PROPOSED DECISION**

The matter came on regularly for hearing before Jaime René Román, Administrative Law Judge, Office of Administrative Hearings,<sup>1</sup> in Sacramento, California, on November 26, 2003.

Complainant was represented by Melodee A. Mathay, Senior Commission Counsel, Fair Political Practices Commission.

Respondent California Independent Business Political Action Committee was represented by Bell, McAndrews, Hiltachk & Davidian, LLP, Attorneys at Law, by Charles H. Bell, Esq.; and respondent Charles H. Bell, Jr., appeared and was represented by Bell, McAndrews, Hiltachk & Davidian, LLP, Attorneys at Law, by Ben Davidian, Esq.

A Stipulation of Facts and argument of counsel were received and the matter deemed submitted on November 26, 2003.

**FACTUAL FINDINGS**

1. Complainant Mark Krausse, Executive Director of the Fair Political Practices Commission ("the Commission"), made and filed the accusation solely in his official capacity. Respondents filed a timely Notice of Defense.

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<sup>1</sup> The Office of Administrative Hearings, extant in the executive branch of the State of California, provides a forum independent of the Fair Political Practices Commission to fully effectuate the State's interest in providing due process by an independent and neutral adjudicative body. See *Haas v. County of San Bernardino* (2002) 27 Cal.4<sup>th</sup> 1017.

## STIPULATED FACTS

2. Respondent California Independent Business Political Action Committee (“CIBPAC”) is, and at all times relevant was, a general purpose recipient campaign committee, as defined in Government Code §82013(a).<sup>2</sup>

3. Respondent Charles H. Bell, Jr., is, and at all times relevant was, the treasurer of CIBPAC, and as such, was one of the persons who comprised CIBPAC.

4. At all times relevant, CIBPAC supported Republican candidates and issues, and received contributions exclusively from three individuals and a business located in southern California –Edward Atsinger III, Richard Riddle, Roland Hinz, and Fieldstone & Co.

5. In early 1996, Robert Prenter was a candidate in the March 26, 1996 Republican primary election for the 30<sup>th</sup> Assembly District<sup>3</sup> seat.

6. In early 1996, Robert Prenter was unknown politically, and had never run for elected public office.

7. Robert Prenter was the nephew of CIBPAC contributor, Edward G. Atsinger III

8. In early 1996, Brian Setencich was the incumbent running for re-election in the March 26, 1996 Republican primary election for the 30<sup>th</sup> Assembly District seat.

9. Assemblyman Brian Setencich had alienated many Republicans during a 1995 partisan struggle for control of the State Assembly, after Democrat Willie Brown’s long tenure as Assembly Speaker ended.

10. Assemblyman Brian Setenich alienated many Republicans by aligning himself with the Assembly Democrats on several issues, and was later named as the Speaker of the Assembly, based on the vote of Democratic Assembly members.

11. At all times relevant, the Committee to Elect Robert Prenter for the Assembly was a recipient campaign committee, controlled by Robert Prenter.

12. Between January 1996 and September 1996, Veronica Prenter, the wife of Robert Prenter, was the treasurer of the Committee to Elect Robert Prenter for the Assembly.

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<sup>2</sup> Government Code §82013(a) provides: “‘Committee’ means any person or combination of persons who directly or indirectly does any of the following: [r]eceive contributions totaling one thousand dollars (\$ 1,000) or more in a calendar year.”

<sup>3</sup> The 30<sup>th</sup> Assembly District is comprised of portions of Fresno, Kings, Madera and Kern counties.

13. In September 1996, respondent Charles H. Bell, Jr. ("Bell") became the treasurer of the Committee to Elect Robert Prenter for the Assembly.

14. Between January 1, 1996 and February 10, 1996, the Committee to Elect Robert Prenter for the Assembly reported on its campaign statement that it received contributions totaling \$300, and made expenditures totaling \$21.

15. Between February 11, 1996 and June 30, 1996, the Committee to Elect Robert Prenter for the Assembly reported that it received contributions totaling \$255,167, and made expenditures totaling \$99,138. Of the total contributions received for this reporting period, \$248,328, or nearly 97% of the contributions, were received from CIBPAC.

16. At all times relevant, the address reported on campaign statements for CIBPAC was 455 Capitol Mall, Suite 801, Sacramento, CA 95814. This address was the address of a law firm in which respondent Charles H. Bell, Jr., was a named partner.<sup>4</sup>

17. From January 1, 1996 until March 16, 1996, the address reported on campaign statements filed with the Secretary of State's Office for candidate Robert Prenter and the Committee to Elect Robert Prenter for the Assembly was listed as 517 Pepper Drive, Apt. F, Hanford, CA 93230.

18. From March 16, 1996 through December 31, 1996, the address reported on campaign statements filed with the Secretary of State's Office for the Committee to Elect Robert Prenter for the Assembly was listed as P.O. Box 77, Hanford, CA 93232. During this time period, the address reported for candidate Robert Prenter was listed as 517 Pepper Drive, Apt. F, Hanford, CA 93230.

19. On or about March 5, 1996, Robert Prenter and his controlled committee<sup>5</sup> paid for the rental of post office box number 77 from the United States Postmaster in Hanford, CA.

20. On or about March 5, 1996, Robert Prenter and his controlled committee paid an initial fee for a bulk rate postage account from the United States Postmaster in Fresno, CA in the name of "Citizens for the Valley."

21. At all times relevant herein, "Citizens of the Valley" was not a recipient campaign committee as defined in Government Code §82013(a) and did not file campaign statements pursuant to the Political Reform Act.

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<sup>4</sup> Respondent Bell, Bar No. 060553, has been a member of the bar of the State of California since 1974. Government Code §§11425.50(c), 11515 and Evidence Code §§451 and 452.

<sup>5</sup> Government Code §82016 defines a "controlled committee" as a committee controlled directly or indirectly by a candidate or that acts jointly with a candidate or controlled committee. A candidate controls a committee if (s)he, his or her agent, or any other committee (s)he controls has a significant influence on the actions or decisions of the committee.

22. On or about and between March 4, 1996 and March 26, 1996, CIBPAC paid for eight separate mass mailings, as defined in Government Code §82041.5,<sup>6</sup> which opposed Brian Setencich's re-election to the 30<sup>th</sup> Assembly District seat. Two of these eight mass mailings supported Robert Prenter's election to the 30<sup>th</sup> Assembly District seat.

23. Respondent Charles H. Bell, Jr., authorized the expenditure of CIBPAC's funds to pay for the eight mass mailings sent between March 4, 1996 and March 26, 1996, as set forth in Counts 1 through 8 of the Accusation.

24. Robert Prenter won the March 26, 1996 primary election, defeating Brian Setencich.

25. Robert Prenter won the general election on November 5, 1996, and served one term in the California State Assembly.

26. On or about and between March 4, 1996 and March 26, 1996, CIBPAC paid for a mass mailing entitled "**Deal**",<sup>7</sup> which opposed the re-election of Assemblyman Brian Setencich, and which was sent on or about and between March 4, 1996 and March 26, 1996.

27. The "**Deal**" mass mailing had sender identification on the outside front page, which stated in the upper left-hand corner: "P.O. Box 77, Hanford, CA 93232-0077"; and in the upper right-hand corner: "Bulk Rate, U.S. Postage, PAID, Citizens for the Valley."

28. On the side edge of the back page of the "**Deal**" mass mailing, in smaller type, was printed: "Paid for by the Committee to Elect Robert Prenter for Assembly."

29. The "**Deal**" mass mailing did not contain sender identification for CIBPAC.

30. On or about and between March 4, 1996 and March 26, 1996, CIBPAC paid for a mass mailing entitled "**And Willie Brown Just Laughed**",<sup>8</sup> which opposed the re-election of Assemblyman Brian Setencich, and which was sent on or about and between March 4, 1996 and March 26, 1996.

31. The "**And Willie Brown Just Laughed**" mass mailing had sender identification on the outside front page, which stated in the upper left-hand corner: "P.O. Box 77, Hanford, CA 93232-0077"; and in the upper right-hand corner: "Bulk Rate, U.S. Postage, PAID, Citizens for the Valley."

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<sup>6</sup> See also Title 2, California Code of Regulations §18435(a) which provides: "A 'mass mailing' has been made when over two hundred substantially similar pieces of mail have been sent within a calendar month."

<sup>7</sup> Count 1.

<sup>8</sup> Count 2.

32. On the side edge of the back page of the **"And Willie Brown Just Laughed"** mass mailing, in smaller type, was printed: "Paid for by the Committee to Elect Robert Prenter for Assembly."

33. The **"And Willie Brown Just Laughed"** mass mailing did not contain sender identification for CIBPAC.

34. On or about and between March 4, 1996 and March 26, 1996, CIBPAC paid for a mass mailing entitled **"Before He Stepped Down"**,<sup>9</sup> which opposed the re-election of Assemblyman Brian Setencich, and which was sent on or about and between March 4, 1996 and March 26, 1996.

35. The **"Before He Stepped Down"** mass mailing had sender identification on the outside front page, which stated in the upper left-hand corner: "P.O. Box 77, Hanford, CA 93232-0077"; and in the upper right-hand corner: "Bulk Rate, U.S. Postage, PAID, Citizens for the Valley."

36. On the bottom edge of the back page of the **"Before He Stepped Down"** mass mailing, in smaller type, was printed: "Paid for by the Committee to Elect Robert Prenter for Assembly."

37. The **"Before He Stepped Down"** mass mailing did not contain sender identification for CIBPAC.

38. On or about and between March 4, 1996 and March 26, 1996, CIBPAC paid for a mass mailing entitled **"They Wanted Justice"**,<sup>10</sup> which opposed the re-election of Assemblyman Brian Setencich, and which was sent on or about and between March 4, 1996 and March 26, 1996.

39. The **"They Wanted Justice"** mass mailing had sender identification on the outside front page, which stated in the upper left-hand corner: "P.O. Box 77, Hanford, CA 93232-0077"; and in the upper right-hand corner: "Bulk Rate, U.S. Postage, PAID, Citizens for the Valley."

40. On the side edge of the back page of the **"They Wanted Justice"** mass mailing, in smaller type, was printed: "Paid for by the Committee to Elect Robert Prenter for Assembly."

41. The **"They Wanted Justice"** mass mailing did not contain sender identification for CIBPAC.

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<sup>9</sup> Count 3.

<sup>10</sup> Count 4.

42. On or about and between March 4, 1996 and March 26, 1996, CIBPAC paid for a mass mailing entitled **"After He Carjacked Her Car"**,<sup>11</sup> which opposed the re-election of Assemblyman Brian Setencich, and which was sent on or about and between March 4, 1996 and March 26, 1996.

43. The **"After He Carjacked Her Car"** mass mailing had sender identification on the outside front page, which stated in the upper left-hand corner: "P.O. Box 77, Hanford, CA 93232-0077"; and in the upper right-hand corner: "Bulk Rate, U.S. Postage, PAID, Citizens for the Valley."

44. On the side edge of the back page of the **"After He Carjacked Her Car"** mass mailing, in smaller type, was printed: "Paid for by the Committee to Elect Robert Prenter for Assembly."

45. The **"After He Carjacked Her Car"** mass mailing did not contain sender identification for CIBPAC.

46. On or about and between March 4, 1996 and March 26, 1996, CIBPAC paid for a mass mailing entitled **"An Act of Betrayal"**,<sup>12</sup> which opposed the re-election of Assemblyman Brian Setencich, and which was sent on or about and between March 4, 1996 and March 26, 1996.

47. The **"An Act of Betrayal"** mass mailing had sender identification on the outside front page, which stated in the upper left-hand corner: "P.O. Box 77, Hanford, CA 93232-0077"; and in the upper right-hand corner: "Bulk Rate, U.S. Postage, PAID, Citizens for the Valley."

48. On the side edge of the back page of the **"An Act of Betrayal"** mass mailing, in smaller type, was printed: "Paid for by the Committee to Elect Robert Prenter for Assembly."

49. The **"An Act of Betrayal"** mass mailing did not contain sender identification for CIBPAC.

50. On or about and between March 4, 1996 and March 26, 1996, CIBPAC paid and sent a mass mailing entitled **"Just Last Week"**,<sup>13</sup> which opposed the re-election of Assemblyman Brian Setencich and supported the election of Robert Prenter, and which was sent on or about and between March 4, 1996 and March 26, 1996.

51. The **"Just Last Week"** mass mailing had sender identification on the outside front page, which stated in the upper left-hand corner: "P.O. Box 77, Hanford, CA 93232-

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<sup>11</sup> Count 5.

<sup>12</sup> Count 6.

<sup>13</sup> Count 7.

0077”; and in the upper right-hand corner: “Bulk Rate, U.S. Postage, PAID, Citizens for the Valley.”

52. On the bottom edge of the back page of the “**Just Last Week**” mass mailing, in smaller type, was printed: “Paid for by the Committee to Elect Robert Prenter for Assembly.”

53. The “**Just Last Week**” mass mailing did not contain sender identification for CIBPAC.

54. On or about and between March 4, 1996 and March 26, 1996, CIBPAC paid for a mass mailing entitled “**We Proudly Support**”,<sup>14</sup> which opposed the re-election of Assemblyman Brian Setencich and supported the election of Robert Prenter, and which was sent on or about and between March 4, 1996 and March 26, 1996.

55. The “**We Proudly Support**” mass mailing had sender identification on the outside front page, which stated in the upper left-hand corner: “Robert Prenter for Assembly, P.O. Box 77, Hanford, CA 93232-0077”; and in the upper right-hand corner: “Bulk Rate, U.S. Postage, PAID, Citizens for the Valley.”

56. On the bottom edge of the back page of the “**We Proudly Support**” mass mailing, in smaller type, was printed: “Paid for by the Committee to Elect Robert Prenter for Assembly.”

57. The “**We Proudly Support**” mass mailing did not contain sender identification for CIBPAC.

## LEGAL CONCLUSIONS

1. This matter rises from the Political Reform Act (“the Act”).<sup>15</sup> Respondents, at the outset, interpose several objections:

- A. The Commission lacks authority to enforce §84035 against CIBPAC.
- B. The Commission is barred by laches.
- C. The Commission is barred by the doctrine against “underground regulations.”
- D. Government Code §84035 and Regulation 18435 are unconstitutional.
- E. Respondent Bell is not liable as either a “sender” or “aider and abetter.”

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<sup>14</sup> Count 8.

<sup>15</sup> Government Code §§81000 through 91014.

*Whether the Commission possesses the authority to enforce §84035 against CIBPAC.*

“The traditional concept of jurisdiction as being the power to hear and determine concerning the subject matter and parties in a particular case has been broadened to include authority to do a particular thing in a particular manner.”<sup>16</sup> Thus, where an Act requires an administrative agency to exercise its jurisdiction in a particular manner, or subject to certain limitations, or to follow a particular procedure, an act beyond those limits functions in excess of that agency’s jurisdiction.<sup>17</sup>

Government Code § 84305 provides:

”(a) Except as provided in subdivision (b), no candidate or committee shall send a mass mailing unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail in the mass mailing and on at least one of the inserts included within each piece of mail of the mailing in no less than 6-point type which shall be in a color or print which contrasts with the background so as to be easily legible. A post office box may be stated in lieu of a street address if the organization’s address is a matter of public record with the Secretary of State.

”(b) If the sender of the mass mailing is a single candidate or committee, the name, street address, and city of the candidate or committee need only be shown on the outside of each piece of mail.

”(c) If the sender of a mass mailing is a controlled committee, the name of the person controlling the committee shall be included in addition to the information required by subdivision (a).”

Directed against a culpable candidate or committee, the clear language of Government Code §84035 vests enforcement authority in the Commission. Respondents’ first contention, however, more particularly questions the authority of the Commission to enforce Government Code §84035 against a campaign treasurer because, respondents contend, the treasurer is not a “sender” of a “mass mailing.”

Government Code §84100 states, “Every committee shall have a treasurer. No expenditure shall be made by or on behalf of a committee without the authorization of the treasurer or that of his or her designated agents. No contribution or expenditure shall be accepted or made by or on behalf of a committee at a time when there is a vacancy in the office of treasurer.” It has been stipulated by and between the parties that respondent Bell was both treasurer and a member of CIBPAC.<sup>18</sup>

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<sup>16</sup> *San Francisco v. Pacello* (1978) 85 Cal. App. 3d 637, 642.

<sup>17</sup> *Pacello, supra*.

<sup>18</sup> Finding 3.



The duties of a treasurer to a committee are expansive.<sup>19</sup> Among such duties include an obligation to maintain detailed accounts, records, bills and receipts necessary to prepare campaign statements, including detailed information and original source documentation for each sent or delivered mass mailing,<sup>20</sup> and also to comply with the provisions of Government Code §§84100, et seq.<sup>21</sup> What can be gleaned from the legislative and regulatory provisions relating to the office of committee treasurer is that “the person...is primarily responsible for initiating and implementing the political activity of the committee.”<sup>22</sup> Mindful that a committee, however organized, must nevertheless act by and through human agency; it becomes readily apparent that the Commission possesses Government Code §84035 enforcement authority against a committee treasurer.<sup>23</sup>

*Whether the Commission’s action is barred by laches.*

Laches is an equitable doctrine applicable in administrative proceedings.<sup>24</sup>

Delay alone will not constitute laches. It must also appear that some prejudice to the defendant was caused thereby.<sup>25</sup>

That being said, it is incumbent on the proponent of the affirmative defense to establish<sup>26</sup> unreasonable delay and prejudice.<sup>27</sup> Within the context of the facts presented herein, respondents have failed to establish either unreasonable delay or, more importantly, concomitant prejudice.

Accordingly, the Commission’s action is not barred by laches.<sup>28</sup>

*Whether the Commission’s action is barred by the doctrine of underground regulations.*

Respondents and complainant readily reference a tortured history of Commission interpretations with respect to both Government Code §84305 and Title 2, California Code of Regulations §18435.

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<sup>19</sup> Government Code §83116.5, and Title 2, California Code of Regulations §§18427(a); 18426.1, and 18431(a)(3)(E).

<sup>20</sup> Title 2, California Code of Regulations §18401(a)(7).

<sup>21</sup> Title 2, California Code of Regulations §18401(a).

<sup>22</sup> Title 2, California Code of Regulations §18427(d).

<sup>23</sup> Although not dispositive, an administrative agency lacks the jurisdiction to declare a statute unenforceable or to refuse to enforce a statute. California Constitution, Article III, §3.5(a).

<sup>24</sup> *Fountain Valley Regional Hosp. & Med. Ctr. v. Bonta*’ (1999) 75 Cal. App. 4<sup>th</sup> 316, 323; *Brown v. State Personnel Bd.* (1985) 166 Cal.App.3d 1151, 1158; and *Gates v. Department of Motor Vehicles* (1979) 94 Cal.App.3d 921, 925 – 926.

<sup>25</sup> *Pacello, supra* at p. 644; *Abbott v. City of Los Angeles* (1958) 50 Cal.2d 438, 459.

<sup>26</sup> *Bonta*’, *supra* at p. 324.

<sup>27</sup> *Bonta*’, *supra* at p. 323.

<sup>28</sup> Although not germane in resolving respondents’ defense of laches; it “is a settled principle that equitable defenses will not ordinarily be invoked to defeat a policy adopted for the public protection.” *Pacello, supra* at p. 646.

Indeed, it is readily conceded by both parties that prior to 1985, Commission staff generally viewed a third-party payer as the “sender” of a non-monetary mailing made in coordination with a candidate. In 1985, the Commission evidently considered a staff-sponsored amendment to regulation 18435 which would have apparently enacted one version applicable to non-monetary contributions requiring disclosure of the candidate or controlled committee as the sender when a third party made a non-monetary payment. The Commission however rejected the amendment and directed its staff to review and seek reconciliation or modification with federal rules. Through, at least 1990, Commission staff continued to take a position that the “sender” of a mailing made in coordination with a candidate was the candidate—not the third party who paid for the mailing as a “non-monetary” or “in-kind contribution.” By November 1991, with respondent Bell present, the Commission publicly rescinded staff advice<sup>29</sup> now sought to be elevated by respondents to regulatory status.

It is readily conceded by the undersigned that staff bulletins, staff interpretations, information manuals are indicative of staff processes and approaches; nevertheless, until and unless adopted by the Commission through the regulatory process, such processes or approaches do not rise, as respondents contend, to the level of regulation. And, despite the deference due, neither the undersigned nor the Commission is constrained by such staff interpretations but, instead, by a reliance on either statutes or regulations properly promulgated. Respondents’ efforts and arguments to ascribe a regulatory status to staff interpretations are misguided, specious and hardly dispositive.

*Whether Government Code §84035 and Title 2, California Code of Regulation §18435 are unconstitutional.*

Respondents avidly urge a determination by the undersigned that Government Code §84305 and Title 2, California Code of Regulations §18435 are each unconstitutional.

Extant for nearly three decades, respondents submit several bases to support their contention that the subject statute and regulation unconstitutionally interfere with respondents’ rights of speech and association. While it has long been constitutionally apparent that speech and association may be subject to some restrictions,<sup>30</sup> it is unnecessary

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<sup>29</sup> The “staff advice” was based on a situation where a “person”, who did not qualify as a “candidate” or “committee” under the Act, paid for a mass mailing at the behest of a candidate or committee. The terms “person,” “candidate,” and “committee” are defined in Government Code §§82047, 82007 and 82031, respectively. Under §84305, a “person” would not be required to identify him or herself as the sender of a mass mailing, unless that person qualified as a “candidate” or “committee.” Based on this problem, Commission staff advised between 1985 and 1991 that the candidate or committee, at whose behest the mass mailing was sent, should be identified on the mailing. This is not applicable in the instant matter because CIBPAC was, at all times relevant, a recipient committee pursuant to Government Code §82013(a).

<sup>30</sup> “Clearly, the State of California has a fervent interest in protecting the public from advertising which is deceptive or is likely to deceive.” *Keimer v. Buena Vista Books, Inc.* (1999) 75 Cal. App. 4th 1220, 1230. See also *McConnell v. Federal Election Comm.* (2003) 2003 U.S. Lexis 9195. (*McConnell* was determined by the United States Supreme Court after submission of this matter and, while not dispositive to any issue appropriate for determination herein, some language in *McConnell* provided particular clarity to issues presented herein.)

for the undersigned to accept respondents' invitation and address issues of constitutional import. Simply put, as cogently observed by respondents:

"An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power: (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional; (b) To declare a statute unconstitutional; (c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations."<sup>31</sup>

While the cases submitted in support of their argument are readily distinguishable—if not inapposite<sup>32</sup>—the constitutionality issues presented are beyond the pale of this tribunal and, accordingly, deferred to a court of competent jurisdiction.

*Whether respondent Bell may be properly liable as a "sender" or "aider and abetter."*

Respondent correctly observes that culpability for a violation of Government Code §84305 or Title 2, California Code of Regulations §18435 lies with the sender. To that end, §18435(b) provides: "The sender, as used in Government Code Section 84305, is the candidate or committee who pays for the largest portion of expenditures attributable to the designing, printing, and posting of the mailing which are reportable under Government Code §§84200-84217." Notably, for purposes of §18435, "to 'pay for' a share of the cost of a mass mailing means to make...any payment to any person for the design, printing, postage, materials or other costs (including salaries, fees, or commissions) of the mailing."<sup>33</sup>

While respondent Bell claims that no liability should attend because he was not a "sender"; it cannot be ignored that no committee may tender a payment from a campaign fund without an extant treasurer<sup>34</sup>—a position held by respondent and to which the facts stipulated by and between the parties establish he discharged by authorizing the rendering of payments for each mass mailing. Admittedly, the committee's culpability pursuant to Government Code §84305 and Title 2, California Code of Regulations §18435 becomes axiomatic; however, respondent, consistent with his office as treasurer, becomes properly and similarly subject to Government Code §84305 and Title 2, California Code of Regulations §18435 as a sender. Indeed, while not necessary to a determination of this issue, it would further appear that Government Code §83116.5 would capture respondent Bell.<sup>35</sup>

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<sup>31</sup> California Constitution, Article III, §3.5.

<sup>32</sup> See *Buckley v. Valeo* (1976) 424 U.S. 1, 13; and *First National Bank v. Bellotti* (1978) 435 U.S. 765, 791 – 792; and "A Political Reformer's Guide to McIntyre and Source Disclosure Laws for Political Advertising", 8 Stan. L. & Pol'y Rev 133 (1997). See also *McConnell*, *supra*.

<sup>33</sup> Title 2, California Code of Regulations §18435(c)(1).

<sup>34</sup> Government Code §84100.

<sup>35</sup> *People v. Snyder* (2000) 22 Cal.4<sup>th</sup> 304.

2. Respondent Bell further, and separately, raises an argument concerning the applicability to Title 2, California Code of Regulations §18316.5 as a bar to Commission prosecution. Such argument, in the particular absence of factual underpinnings,<sup>36</sup> lacks merit.

3. The Commission is charged with the responsibility to administer, implement and enforce the Act. An express purpose of the Act is to ensure that receipts and expenditures affecting election campaigns are fully disclosed to the public so that the electorate may be better informed and improper practices inhibited.<sup>37</sup> To that end, as cogently noted by complainant's counsel, the Act sets forth a comprehensive campaign reporting system designed to accomplish this purpose of disclosure in Chapter 4 of the Act.<sup>38</sup> Chapter 4 provides detailed requirements concerning the organization of committees and the filing of campaign statements by candidates and persons who qualify as "committees".<sup>39</sup> Further, Chapter 4 contains statutes concerning prohibitions, exemptions and advertisements that apply to candidates and committees.

Within, no doubt, the context of political campaigning or political campaign fundraising prior to implementation of the Act, what appeared to be lost is the maxim attendant to our political system; namely, the People are supreme. All sovereign powers lies with the People. To the extent that deception, in whatever form, was effected on the People in the exercise of their will at the ballot box, a travesty of political dimension results—not merely for the contemporary electorate but, equally significant, future electorates. The Act, since its enactment, seeks to hold those who would implement or facilitate such errant conduct culpable, accountable and responsible.

One of the campaign disclosure prohibitions found in Chapter 4 concerns specific requirements for mass mailings. Government Code §82041.5 defines a "mass mailing" as over 200 substantially similar pieces of mail (excluding a form letter or other mail sent in response to an unsolicited request, letter or other inquiry). Government Code §84305(a) provides that candidates and committees are prohibited from sending a mass mailing unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail in the mass mailing and on at least one of the inserts included within each piece of mail in the mailing in no less than 6-point type. The printing type must be in a color or print that contrasts with the background of the mailing so as to be easily legible. A post office box may be stated in lieu of a street address if the candidate or committee's street address is a matter of public record with the Secretary of State—most commonly as reported on the committee's statement of organization. Pursuant to Government Code §84035(b), if the sender of the mass mailing is a single candidate or committee, the name, street address, and city of the candidate or committee need only be shown on the outside of each piece of mail. Finally, Government Code §84305(c) states that if the sender of the mass mailing is a controlled committee, the name of

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<sup>36</sup> Title 2, California Code of Regulations §18316.5(a)(2)(B).

<sup>37</sup> Government Code §81002(a).

<sup>38</sup> Government Code §§84100 – 84511.

<sup>39</sup> See Government Code §82013.

the person controlling the committee must be included in addition to the information required by §84305(a).

Admittedly the statutory language of §84305 does not define the term “sender”; however, the Commission has provided a definition by an implementing regulation. Regulation 18435(b)<sup>40</sup> states that the “sender” of a mass mailing, as used in §84305, is “the candidate or committee who pays for the largest portion of expenditures attributable to the designing, printing, and posting of the mailing which is reportable under Government Code §§84200 – 84217. Section 18435(c) provides that to “pay for” a share of the cost of a mass mailing means to make, promise to make, or to incur an obligation to make, any payment: (1) to a person for the design, printing, postage, materials or other costs (including salaries, fees, or commissions) of the mailing; or (2) as a fee or other consideration for an endorsement or, in the case of a ballot measure, support or opposition in the mailing.

What emerges from the stipulated facts is that in 1996, CIBPAC, a general purpose recipient campaign committee, supported conservative Republican candidates and received its campaign contributions exclusively from three businessmen and a business located in southern California. Respondent Bell served as CIBPAC’s campaign treasurer and was the person who authorized the payment of CIBPAC’s funds for eight Prenter campaign mass mailings. Prenter, the nephew of Edward G. Atsinger III (one of CIBPAC’s four contributors), was unknown in political circles, had never run for public office prior to the March 1996 primary election, was now a Republican primary election candidate for the 30<sup>th</sup> Assembly District. Prenter’s controlled committee for the March 1996 campaign was the “Committee to Elect Robert Prenter for the Assembly” (hereafter “CERPA”). Prenter’s wife, Veronica Prenter, served as CERPA’s treasurer until September 1996 when respondent Bell, CIBPAC’s treasurer, became CERPA’s treasurer.

Notably, Prenter’s initial campaign statement publicly revealed little financial backing. His initial pre-election campaign statement for the period January 1, 1996 through February 10, 1996, reported contributions totaling \$300 and expenses of \$21. Subsequent campaign statements (February 11, 1996 – June 30, 1996) publicly reported contributions totaling \$255,167 and expenses of \$99,138. CIBPAC’s contribution to CERPA, during this subsequent campaign period (February 11, 1996 – June 30, 1996) totaled \$248,328.

On March 5, 1996, Prenter—CERPA—paid for the rental of post office box number 77 in the City of Hanford, and also paid an initial fee for a bulk rate postage account in the name of “Citizens of the Valley.”<sup>41</sup> Between March 4, 1996 and March 26, 1996, CIBPAC paid for and sent eight political mass mailings to 30<sup>th</sup> Assembly District voters. Six of the mailings opposed Assemblyman Brian Setencich and, without reference to Prenter’s candidacy, linked Setencich unfavorably to former Democratic Assembly Speaker Willie Brown.<sup>42</sup> The two remaining

<sup>40</sup> Title 2, California Code of Regulations §18435(b).

<sup>41</sup> It is not established that “Citizens of the Valley” ever qualified as a committee under the Act, filed campaign statements or properly existed as an organization.

<sup>42</sup> “Issue advertising”—“the use or omission of “magic words’ such as ‘Elect John Smith’ or ‘Vote Against Jane Doe’” mark a line separating “express advocacy” from “issue advocacy.” *McConnell, supra*. The effect of these six

CIBPAC mass mailings both opposed Setencich and had text supporting Prenter. All of the eight mass mailings, however, had sender identification on the front side that indicated that the mailing was “paid” for by the non-existent “Citizens of the Valley” and listed the Hanford post office box. On the back page of each of the eight mass mailings, the committee name for Prenter’s campaign, CERPA, was listed. None of the eight mass mailings indicated that CIBPAC paid for and was the actual “sender” of the mass mailings.

Notwithstanding being a political unknown prior to January 1996, and despite never having run for public office, Prenter defeated Setencich for the Republican primary nomination on March 26, 1996, and later won the Assembly seat in the November 1996 general election, serving one two-year term.

“We all know that money is the chief source of corruption. We all know that large contributions not only put the political party under obligation to the large contributors, who demand pay in the way of legislation, but we also know that large sums of money are used for the purpose of conducting expensive campaigns through the newspapers and over the radio; in the publication of all sorts of literature, true and untrue; and for the purpose of paying the expenses of campaigners sent out into the country to spread propaganda, both true and untrue.”<sup>43</sup>

The electorate has a right to expect that candidate campaigns for public office will be honest and forthcoming. It is common knowledge that candidates require and acquire funds to campaign.<sup>44</sup> However funds employed by candidates for election to public office that would, in particular, reveal a potential for particular political influence, is worthy of public disclosure.<sup>45</sup> Indeed, an attorney who would deceive a client into the execution of a contract, a Will, a waiver of rights incident to a change of plea, would breach his fiduciary duty. A real estate professional who would equally fail to disclose a hidden commission to a client with respect to a real estate transaction would be subject, at the very least, to professional discipline. And a physician who would secretly profit in the prescribed treatment of a patient would be equally subject to professional scrutiny. But, it appears, in the political context of public office campaigns, where the ultimate goal is the vesting of political power in an

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mailings as it related to the Prenter campaign has not been lost on the Commission. Such advertising demonstrates particular acumen and scienter. Indeed, in *McConnell*, the U.S. Supreme Court observes that with respect to “issue ads, sponsors of such ads often used misleading names and conceal their identity. ‘Citizens for Better Medicare,’ for instance, was not a grassroots organization of citizens, as its name might suggest, but was instead a platform for an association of drug manufacturers. And ‘Republicans for Clean Air,’ which ran ads in the 2000 Republican Presidential primary, was actually an organization consisting of just two individuals—brothers who together spent \$25 million on ads supporting their favored candidate.” See also *McConnell*, *supra* at fn. 23.

<sup>43</sup> *United States v. Automobile Workers* (1957) 352 U.S. 567, 577 – 578, quoting Senator Bankhead. See also *McConnell*, *supra*.

<sup>44</sup> “A Funny Thing Happened on the Way to the Market: The Supreme Court and Political Speech in the Electoral Process”, 17 J. L. & Politics 489, 523 (2001); “Money, Politics and Judicial Decisions: A Case Study of Arbitration Law in Alabama,” 30 Cap. U.L. Rev. 583, 583 - 584 (2000).

<sup>45</sup> *Automobile Workers*, *supra* at p. 571. See also *McConnell*, *supra*.

electorate's representatives, such conduct as that effected in the Prenter campaign is cavalierly treated by respondents as "just politics".

CIBPAC's culpability is readily demonstrated. Respondent Bell was the Treasurer of CIBPAC. In such capacity he possessed various statutory and regulatory duties. Impugning his law firm by the utilization of his law office address, it becomes apparent that respondent's status as an attorney begged deference from other committee members as one possessed of particular knowledge, experience and training in the exercise of his responsibilities to CIBPAC. Respondent Bell's self-professed naivete is belied by his experience, education, training, and licensure.

Cause exists to impose a penalty against respondents, jointly and severally, pursuant to Government Code §§81003, 82013, 82041.5, 83111, 83115, 83115.5, 83116, 83116.5, 84200 – 84217, 84305, 91101(b) and 91006; in conjunction with Title 2, California Code of Regulations §§18361(e)(3), 18401, 18426.1, 18427, 18431 and 18435; and as set forth in Findings 2 – 29.

4. Cause exists to impose a penalty against respondents, jointly and severally, pursuant to Government Code §§81003, 82013, 82041.5, 83111, 83115, 83115.5, 83116, 83116.5, 84200 – 84217, 84305, 91101(b) and 91006; in conjunction with Title 2, California Code of Regulations §§18361(e)(3), 18401, 18426.1, 18427, 18431 and 18435; and as set forth in Legal Conclusion 3 and Findings 2 – 25 and 30 – 33.

5. Cause exists to impose a penalty against respondents, jointly and severally, pursuant to Government Code §§81003, 82013, 82041.5, 83111, 83115, 83115.5, 83116, 83116.5, 84200 – 84217, 84305, 91101(b) and 91006; in conjunction with Title 2, California Code of Regulations §§18361(e)(3), 18401, 18426.1, 18427, 18431 and 18435; and as set forth in Legal Conclusion 3 and Findings 2 – 25 and 34 – 37.

6. Cause exists to impose a penalty against respondents, jointly and severally, pursuant to Government Code §§81003, 82013, 82041.5, 83111, 83115, 83115.5, 83116, 83116.5, 84200 – 84217, 84305, 91101(b) and 91006; in conjunction with Title 2, California Code of Regulations §§18361(e)(3), 18401, 18426.1, 18427, 18431 and 18435; and as set forth in Legal Conclusion 3 and Findings 2 – 25 and 38 – 41.

7. Cause exists to impose a penalty against respondents, jointly and severally, pursuant to Government Code §§81003, 82013, 82041.5, 83111, 83115, 83115.5, 83116, 83116.5, 84200 – 84217, 84305, 91101(b) and 91006; in conjunction with Title 2, California Code of Regulations §§18361(e)(3), 18401, 18426.1, 18427, 18431 and 18435; and as set forth in Legal Conclusion 3 and Findings 2 – 25 and 42 – 45.

8. Cause exists to impose a penalty against respondents, jointly and severally, pursuant to Government Code §§81003, 82013, 82041.5, 83111, 83115, 83115.5, 83116, 83116.5, 84200 – 84217, 84305, 91101(b) and 91006; in conjunction with Title 2, California Code of Regulations §§18361(e)(3), 18401, 18426.1, 18427, 18431 and 18435; and as set forth in Legal Conclusion 3 and Findings 2 – 25 and 46 – 49.

9. Cause exists to impose a penalty against respondents, jointly and severally, pursuant to Government Code §§81003, 82013, 82041.5, 83111, 83115, 83115.5, 83116, 83116.5, 84200 – 84217, 84305, 91101(b) and 91006; in conjunction with Title 2, California Code of Regulations §§18361(e)(3), 18401, 18426.1, 18427, 18431 and 18435; and as set forth in Legal Conclusion 3 and Findings 2 – 25 and 50 – 53.

10. Cause exists to impose a penalty against respondents, jointly and severally, pursuant to Government Code §§81003, 82013, 82041.5, 83111, 83115, 83115.5, 83116, 83116.5, 84200 – 84217, 84305, 91101(b) and 91006; in conjunction with Title 2, California Code of Regulations §§18361(e)(3), 18401, 18426.1, 18427, 18431 and 18435; and as set forth in Legal Conclusion 3 and Findings 2 – 25 and 54 – 57.

11. Pursuant to then-extant Government Code §83116(c),<sup>46</sup> administrative penalties of up to \$2,000 for each violation of the Act may be imposed. The maximum penalty that may be imposed in this matter is \$16,000. Complainant seeks the maximum penalty. Respondents, essentially, pray for dismissal of the Accusation.

Title 2, California Code of Regulations §18361(e)(4) state that the following pertinent factors should be considered in determining an appropriate penalty to be imposed for violations of the Act:

1. The seriousness of the violation.
2. The presence or absence of any intention to conceal, deceive or mislead.
3. Whether the violation was deliberate, negligent or inadvertent.
4. Whether the violator demonstrated good faith by consulting Commission staff or any other governmental agency in a manner not constituting a complete defense.
5. Whether the violation was isolated or part of a pattern or whether the violator has a prior record of violations of the Act.

Respondents' mailings—all of them—deceived the unsuspecting electorate of the 30<sup>th</sup> Assembly District by deliberately and repeatedly failing to disclose the small coterie of individuals, labeled the California Independent Business Political Action Committee and responsible for the barrage of mailings descending on the public. Ostensibly ascribing the mass mailings to a non-existent organization known as "Citizens of the Valley" that further functioned to fund their creation and dissemination, respondents deceived and misled the public in what appeared to be a "grass roots" movement of citizenry vis-à-vis a business-focused political action committee<sup>47</sup> with roots not in the 30<sup>th</sup> Assembly District but Sacramento

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<sup>46</sup> Effective January 1, 2001, the Act now provides for an administrative penalty of up to \$5,000 for each violation.

<sup>47</sup> Cf. *McConnell*, *supra* at fn. 23.



(respondent Bell) and southern California (the financial contributors). No competent or credible evidence was presented that would establish respondents' conduct as less than deliberate and intentional (i.e., negligent or inadvertent or effected in good faith). The significance and frequency of the mass mailings within a brief period prior to the March primary is axiomatic and was clearly effected to deceive and mislead the public. Such conduct is reprehensible because it not only affects the integrity of the electoral process but, equally important, each respondent's personal civic responsibility for the successful and honest functioning of that process.<sup>48</sup> The nature, scope and extent of respondents' conduct provides the *raison d'être* that compels Commission scrutiny and enforcement in assuring honest electioneering. Respondents admittedly gained a representative in the Assembly—but at the expense of integrity.

The maximum penalty for each violation is proper.

### ORDER

1. Respondents California Independent Business Political Action Committee and Charles H. Bell, Jr., shall severally and jointly pay forthwith the Fair Political Practices Commission, State of California, the sum of Two Thousand Dollars (\$2,000) as penalties pursuant to Legal Conclusions 3 and 11.

2. Respondents California Independent Business Political Action Committee and Charles H. Bell, Jr., shall severally and jointly pay forthwith the Fair Political Practices Commission, State of California, the sum of Two Thousand Dollars (\$2,000) as penalties pursuant to Legal Conclusions 4 and 11.

3. Respondents California Independent Business Political Action Committee and Charles H. Bell, Jr., shall severally and jointly pay forthwith the Fair Political Practices Commission, State of California, the sum of Two Thousand Dollars (\$2,000) as penalties pursuant to Legal Conclusions 5 and 11.

4. Respondents California Independent Business Political Action Committee and Charles H. Bell, Jr., shall severally and jointly pay forthwith the Fair Political Practices Commission, State of California, the sum of Two Thousand Dollars (\$2,000) as penalties pursuant to Legal Conclusions 6 and 11.

5. Respondents California Independent Business Political Action Committee and Charles H. Bell, Jr., shall severally and jointly pay forthwith the Fair Political Practices Commission, State of California, the sum of Two Thousand Dollars (\$2,000) as penalties pursuant to Legal Conclusions 7 and 11.

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<sup>48</sup> *Automobile Workers*, *supra* at p. 570; *Federal Election Comm'n v. National Right to Work Comm.* (1982) 459 U.S. 197, 208; *McConnell*, *supra*.

6. Respondents California Independent Business Political Action Committee and Charles H. Bell, Jr., shall severally and jointly pay forthwith the Fair Political Practices Commission, State of California, the sum of Two Thousand Dollars (\$2,000) as penalties pursuant to Legal Conclusions 8 and 11.

7. Respondents California Independent Business Political Action Committee and Charles H. Bell, Jr., shall severally and jointly pay forthwith the Fair Political Practices Commission, State of California, the sum of Two Thousand Dollars (\$2,000) as penalties pursuant to Legal Conclusions 9 and 11.

8. Respondents California Independent Business Political Action Committee and Charles H. Bell, Jr., shall severally and jointly pay forthwith the Fair Political Practices Commission, State of California, the sum of Two Thousand Dollars (\$2,000) as penalties pursuant to Legal Conclusions 10 – 11.

Dated: 12-17-03

  
JAIME RENÉ ROMAN  
Administrative Law Judge  
Office of Administrative Hearings